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 22 MYGUIDE HOLDING GMBH  
 23 and MYGUIDEGPS LTD.

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26 IN THE UNITED STATES DISTRICT COURT  
 27 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
 28

SAN JOSE DIVISION

19	MYGUIDE HOLDING GMBH	)	
20	and MYGUIDEGPS LTD.,	)	
21	Plaintiffs,	)	
22	v.	)	Case No. CV 08-0057 JF
23	RANDOLPH KEMPS, an individual,	)	<b>PLAINTIFFS' CASE</b>
24	ARES DIGITAL, INC., and MYGUIDE	)	<b>MANAGEMENT STATEMENT</b>
25	(USA) INC.	)	
26	Defendants.	)	

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28 RANDOLPH KEMPS, an individual, )

1 ARES DIGITAL, INC., and MYGUIDE )  
 (USA) INC. )  
 2 Counterclaimants, )  
 3 )  
 v. )  
 4 MYGUIDE HOLDING GMBH )  
 5 and MYGUIDEGPS LTD., )  
 6 Counterdefendants. )  
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9 Plaintiffs hereby submit the following Case Management Statement.  
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11 **1. Jurisdiction and Service**  
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13 This Court has subject matter jurisdiction over Plaintiffs' claims and Defendants'  
 14 counterclaims under 15 U.S.C. §§ 1121 and 1051, *et seq.*, and under 28 U.S.C. §§ 1331, 1332,  
 15 1338, and 1367. The parties have agreed that there are no existing issues regarding personal  
 16 jurisdiction or venue. At this time, there are no named parties that remain to be served.  
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18 **2. Facts**  
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20 This matter involves a dispute over the ownership of the United States trademark and  
 21 trade name rights in the mark and trade name MYGUIDE, including U.S. Trademark Reg. No.  
 22 3,227,772 (collectively, the "MYGUIDE Marks") and alleged claims for damages incurred by  
 23 the parties during the course of and following the business relationship between the parties.  
 24 Plaintiffs are in the business of selling portable navigational devices under the MYGUIDE  
 25 Marks (the "MyGuide Products") throughout the world and maintain office locations in  
 Europe, Asia and Russia. Defendants are former non-exclusive U.S. distributors of MyGuide  
 Products. Defendant Randolph Kemps ("Kemps") is the current owner of record of a U.S.  
 trademark registration for 4/17/2008 the MyGuide logo, U.S. Reg No. 3,227,772 (the  
 "MYGUIDE Registration"). "Plaintiffs" as used herein shall refer to the named plaintiffs and  
 their predecessors-in-interest.  
 26

27 Plaintiffs contend that the following factual issues are in dispute:  
 28

- Whether Defendant Kemps agreed to register the MYGUIDE Marks on behalf of and for the benefit of Plaintiffs and, once registered, to transfer the MYGUIDE Registration to Plaintiffs or their designee.
  - Whether Plaintiffs have at all times exercised control over the nature and quality of the goods on which the MYGUIDE Marks appear.
  - Whether Defendants have failed to make payment on Invoice Nos. 20070921-US and PF2007525.
  - Whether Defendants interfered with Plaintiffs' economic relationships with third parties in the United States.
  - Whether and for what periods Defendants were authorized to use the MYGUIDE Marks in commerce.
  - Whether Defendants made certain false or misleading representations regarding the registration and use of the MYGUIDE Marks; whether Defendants' made any such misrepresentation with the intent to induce Plaintiffs' reliance thereon; and whether Plaintiffs reasonably relied on those misrepresentations.
  - Whether Plaintiffs agreed to and failed to deliver product to Defendants in a timely and proper manner.
  - Whether Plaintiffs made spurious and damaging claims about Defendants to Defendants' customers.
  - Whether Plaintiffs misappropriated Defendants' business and customers for itself.
  - Whether Plaintiffs or Defendants were the first to use the MYGUIDE Marks in the United States.

### **3. Legal Issues**

Plaintiffs contend that the following legal issues are raised in the Complaint and in dispute:

- Whether MyGuide Holding GmbH is the rightful owner of the MYGUIDE Marks.
  - Whether Defendants' use of the MYGUIDE Marks was/is in violation of § 32 of the Lanham Act, 15 U.S.C. § 1114.

- Whether Defendants' use of the MYGUIDE Marks was/is in violation of § 43(a) of the Lanham Act, 15 U.S.C. § 1125.
  - Whether Defendants' conduct constitutes trademark infringement in violation of Cal. Bus. & Prof. Code § 14335.
  - Whether Defendants' conduct constitutes unfair competition in violation of Cal. Bus. & Prof. Code § 17200, *et seq.*
  - Whether Defendants' conduct constitutes infringement and unfair competition in violation of the common law of the state of California.
  - Whether Defendants and Plaintiffs formed a valid and enforceable oral agreement under which Defendant Kemps agreed to transfer all rights in the MYGUIDE Registration to Plaintiffs or their designee.
  - Whether Defendants should be estopped from asserting that such promise was unenforceable under the doctrine of promissory estoppel.
  - Whether Plaintiffs or Defendants breached the Letter of Intent set forth in Paragraph 33 of the Complaint.
  - Whether Defendants had a duty to negotiate in good faith and whether that duty was breached by Defendants.
  - Whether Plaintiffs are entitled to restitutionary relief in the form of an order transferring the MYGUIDE Registration to Plaintiff MyGuide Holding GmbH under the doctrine of unjust enrichment.
  - Whether Plaintiffs were defrauded by certain representations made by Defendant Kemps regarding registration of the MYGUIDE Marks and transfer of the MyGuide Registration.
  - Whether Defendants unlawfully interfered with Plaintiffs' economic relationships.
  - Whether Plaintiffs are entitled to (1) a declaration that MyGuide Holding GmbH is the rightful owner of the MYGUIDE Marks; (2) a permanent injunction as set forth in Paragraph 4 of Plaintiffs' Prayer for Relief; (3) recovery of damages incurred as a result of Defendants' conduct; and (4) all other relief as requested in the Complaint.

1 Plaintiffs contend that the following legal issues are raised in the Defendants'  
2 counterclaims and in dispute:

- 3 • Whether Plaintiffs' use of the MYGUIDE Marks was/is in violation of § 32 of the  
4 Lanham Act, 15 U.S.C. § 1114.
- 5 • Whether Plaintiffs' conduct constitutes infringement and unfair competition in  
6 violation of the common law of the state of California.
- 7 • Whether Plaintiffs' use of the MYGUIDE Marks was/is in violation of § 43(a) of  
8 the Lanham Act, 15 U.S.C. § 1125.
- 9 • Whether Plaintiffs' conduct constitutes trademark infringement in violation of  
10 Cal. Bus. & Prof. Code § 14335.
- 11 • Whether Plaintiffs' conduct constitutes unfair competition in violation of Cal.  
12 Bus. & Prof. Code § 17200, *et seq.*
- 13 • Whether Defendants and Plaintiffs formed a valid and enforceable oral agreement  
14 under which Defendant Kemps would transfer all rights in the MYGUIDE Registration to  
15 Plaintiffs or their designee in exchange for certain conditions as alleged by Defendants.
- 16 • Whether Defendants are entitled to monetary relief under the doctrine of unjust  
17 enrichment.
- 18 • Whether Defendants are entitled to recover damages for Plaintiffs' interference  
19 with Defendants' economic relationships.
- 20 • Whether Plaintiffs' conduct amounted to fraud, misrepresentation, or fraudulent  
21 inducement.
- 22 • Whether Defendants are entitled to recover direct, consequential, incidental, and  
23 other damages; punitive damages; and costs and attorneys fees as a result of Plaintiffs'  
24 conduct.

25 **4. Motions**

26 There are no motions pending at this time.

27 **5. Amendment of Pleadings**

1       The Plaintiffs propose August 1, 2008 as the deadline for adding new parties, claims, or  
2 counterclaims.

3       **6. Evidence Preservation**

4       The parties have discussed the preservation of evidence and have agreed not to delete any  
5 potentially relevant e-mails or destroy any potentially relevant documents, electronic or  
6 otherwise, or any other potentially relevant electronically-recorded material, until this dispute is  
7 resolved, except as agreed to by the parties.

8       **Disclosures**

9       The parties have not exchanged initial disclosures. The Plaintiffs propose that initial  
10 disclosures be exchanged on or before May 9, 2008.

11      **7. Discovery**

12      At this time, the Plaintiffs do not anticipate that any change should be made in the  
13 limitations on discovery imposed under the Federal Rules of Civil Procedure or the Local Rules,  
14 or of any additional limitations that should be imposed. One or more of the parties may require  
15 the ability to take more than ten depositions, but they will be in a better position to assess their  
16 needs as discovery progresses. The parties have discussed the issues regarding discovery of  
17 electronically stored information (ESI), and the Plaintiffs propose that the parties enter into an  
18 agreement with respect to ESI which will include how and in what form such ESI will be  
19 exchanged.

20      **8. Class Actions**

21      Not applicable.

22      **9. Related Cases**

23      Not applicable.

24      **10. Relief**

25      Plaintiffs seek a declaratory judgment that MyGuide Holding GmbH is the rightful owner  
26 of the MYGUIDE Marks. Plaintiffs also seek injunctive and monetary relief. Plaintiffs believe  
27 they are entitled to damages in an amount of (1) the Defendants' profits derived from the  
28 unauthorized sale or distribution of goods bearing the MYGUIDE Marks; (2) the amounts owing

1 under Invoice Nos. 20070921-US and PF2007525; (3) the actual, consequential, incidental, and  
 2 other damages caused by Defendants' wrongful conduct; (4) punitive damages; and (5)  
 3 Plaintiffs' costs and attorneys fees pursuant to 15 U.S.C. § 1117(a).

4 The Plaintiffs believe that they will be in a better position to give precise estimates  
 5 regarding their damages as discovery progresses.

6

7 **11. Settlement and ADR**

8 The parties have not had success with settlement discussions to date. The parties have  
 9 complied with ADR L.R. 3-5 and have agreed to participate in a court-ordered mediation.  
 10 Pursuant to the Court's ADR Order, the parties will do so within 90 days of entry of the Case  
 11 Management Order.

12 **12. Consent to Magistrate Judge for All Purposes**

13 The Plaintiffs do not consent to the assignment of this matter to a Magistrate Judge for all  
 14 purposes.

15 **13. Other References**

16 The Plaintiffs do not believe that this case is suitable for reference to binding arbitration,  
 17 a special master, or the Judicial Panel on Multidistrict Litigation.

18 **14. Narrowing of the Issues**

19 The Plaintiffs are open to narrowing certain issues via stipulated facts as the factual and  
 20 legal issues are clarified during the course of discovery. At this time the Plaintiffs do not foresee  
 21 bifurcating any issues, claims, or defenses.

22 **15. Expedited Schedule**

23 Plaintiffs have proposed proceeding on an expedited basis. Defendants have declined to  
 24 consent to an expedited schedule. Plaintiffs are nonetheless hopeful that the case can be handled  
 25 without significant delay and have agreed to the schedule proposed below.

26 **16. Scheduling**

27 The Plaintiffs propose the following schedule:

28 Close of Fact Discovery:

September 26, 2008

1	Designation of Experts:	September 26, 2008
2	Close of Expert Discovery:	October 24, 2008
3	Expert Rebuttal:	November 7, 2008
4	Hearing of Dispositive Motions:	December 19, 2008
5	Pretrial Conference:	February 5, 2009
6	Trial:	March 9, 2009

## 17. Trial

8 The Plaintiffs expect the trial in this matter to last five to seven days. Defendants have  
9 demanded a trial by jury.

#### **18. Disclosure of Non-Party Interested Entities or Persons.**

11 The parties have filed their Certifications of Interested Entities or Persons. As stated in  
12 those filings, neither party is aware of any interested entities or persons.

14 || DATED: April 25, 2008.

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/s/  
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